IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2229 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEMUNABEN AMAD KHALIFA

Versus

DEPUTY FOREST CONSERVATOR

Appearance:

MR DM THAKKAR FOR MR PM THAKKAR for Petitioner

MR DP JOSHI AGp for RespondentS.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/06/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the orders dated 22-6-1988 and 5-12-1988 Annexure-D & E respectively passed by the respondent no. 1, whereby the petitioner was denied for the amount entitled from the Group Insurance Fund and the order was also passed for recovery of salary from amount of the

gratuity payable to the petitioner.

2. The petitioner's husband Amad Ibrahim Khalifa joined as a peon on 8-5-1949 in permanent service of the respondents and served till he died on 28-1-1988. Initially the petitioner's husband was appointed as a peon and thereafter he was promoted to the post of driver. The birth date of the petitioner's husband was 2-3-1933 as recorded in the service record of the the petitioner's husband.

3. The respondents gave notice to the petitioner's husband stating therein that the petitioner's husband was to retire from service with effect from 30-6-1987. It is alleged that the notice was given on misconception regarding the date of birth of the petitioner's husband and considered the date of birth of the petitioner's husband as 1-7-1929 instead of 2-3-1933 the petitioner's husband. The petitioner filed Regular Civil Suit No.592/89 in the Court of the Civil Judge (SD), Jamnagar and also prayed for interim injunction application was finally decided and interim injunction was granted in favour of the petitioner's husband and thereafter mandatory injunction was also granted in his favour on the application exh. 5 and the respondents were directed to reinstate the the petitioner's husband in service with retrospective effect from 30-6-1987 vide order dated 16-7-1987 and as a result of the injunction granted by the Court in favour of the petitioner's husband, he was continued in service till he died even after 30-6-1987. The respondents filed an appeal under O.43 R. 1 of the CPC against the aforesaid order passed below the application exh. 5 before the District Court, Jamnagar. The respondents could not obtained any interim relief during the pendency of the appeal. Learned Assistant Judge, Jamnagar vide order dated 18-1-1988 allowed the aforesaid civil appeal filed by the respondent and vacated the mandatory injunction which was granted in favour the petitioner's husband. The parties came to know about passing of the order dated 18-1-1988 in the aforesaid appeal on 28-1-1988. The petitioner's husband having came to know about the vacation of the interim order, suffered massive heart attack and died on the same day. Thereafter, the petitioner sent several letters to the respondents for payment of legal dues of her deceased husband but the respondents did not give any reply to the petitioner. Thereafter, the petitioner received letter dated 22-6-1988 Annexure-D from the respondents wherein it was stated that since her husband had retired on 30-6-1987 she is not entitled to get Rs.20,000/- towards Group Insurance Fund. Later on, the petitioner also

received letter 5-12-1988 Annexure-E from the respondents wherein it has been stated that the salary received by her husband for the period from 1-7-1987 to 20-1-1988 shall be recovered from the amount of gratuity payable to the petitioner. It is also further stated that the amount of Rs.9950-20 ps. shall be deducted from the amount of gratuity amount payable to her towards gratuity. The respondents have also not given any encashment for the authorized leave during the service of the petitioner's husband till 28-1-1988.

4. I have carefully considered the submissions made by the learned counsel for the parties and perused the papers on record.

5. So far as the recovery of salary from the amount of gratuity of the petitioner's husband is concerned, the petitioner's husband continued in service till 18-1-1988 as a result of interim relief granted by the trial Court. The respondents availed the service of the petitioner's husband till he died on 28-1-1988 and for that period the the petitioner's husband was entitled to receive salary which has been received by him. But the respondents cannot recover the amount of salary already paid to him for the period from l1-7-1987 till 28-1-1988 as the salary was in respect of the services rendered by the the petitioner's husband in compliance of the Court's orders. As such, the order passed by the respondents with regard to recovery of salary from the amount of gratuity of the petitioner's husband is illegal and is not sustainable in the eye of law.

6. So far as the amount of group insurance fund is concerned, admittedly the petitioner was due for retirement on 30-6-1987 and he had paid contribution towards group insurance fund. The he petitioner's husband was entitled for that amount till the date of his retirement. In case, the petitioner's husband remained in service after retirement 30-6-1987, the petitioner's husband has paid contribution towards group insurance fund. As such, the petitioner's husband was entitled for the amount of group insurance fund till 30-6-1987 and the actual amount paid towards the ground insurance fund by the the petitioner's husband after 30-6-1987 also entitled for refund of that amount. As such, the respondents were not competent to deny for paymennt of the amount of group insurance fund payable to the petitioner's husband and the actual amount paid by the the petitioner's husband towards group insurance fund till his death. As such, the impugned orders passed by the respondents denying the benefits of group insurance

fund and entitlement of the actual amount paid by the petitioner's husband towards group insurance fund after his retirement and impugned order of recovery of salary from the amount of gratuity to be paid to the petitioner's husband for the period from 1-7-1987 to 28-1-1988 are illegal and are not sustainable in the eye of law. Therefore, this petition deserves to be allowed.

7. Accordingly, this petition is allowed. The impugned orders dated 22-6-1988 and 5-12-1988 Annexure-D and "E" to the petition are hereby quashed and set aside. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/